

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FUBOTV INC., et al.,

Plaintiffs,

-against-

THE WALT DISNEY COMPANY, et al.,

Defendants.

USDC SDNY
DOCUMENT
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24-CV-01363 (MMG)

ORDER

MARGARET M. GARNETT, United States District Judge:

Counsel for all parties are HEREBY ORDERED to appear for oral argument on Defendant Fox's Motion to Sever Claims and Transfer Venue (Dkt. No. 306) and all Defendants' Motions to Dismiss, (Dkt. Nos. 312, 319, 322) on **Friday, December 13, 2024 at 10:30 a.m.** in Courtroom 906 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, NY 10007.

Fox's Motion to Sever Claims and Transfer Venue

Counsel for Fox and Fubo will each be allotted 15 minutes to present their argument, with Fox permitted to reserve a portion of that time for rebuttal.

Counsel shall come prepared to discuss all issues and caselaw raised in the parties' briefing in support of and in opposition to the motion, but in addition, they should be prepared to discuss issues of contract interpretation largely unaddressed in either party's papers, specifically (i) the import of California law on that interpretation, *see Martinez v. Bloomberg LP*, 740 F.3d 211, 220–22 (2d Cir. 2014) (courts must apply the law contractually chosen by the parties to interpret forum selection clauses, because, while questions of venue are essentially procedural and thus should be governed by federal law, contract law and the rules governing contract interpretation “is quintessentially substantive for *Erie* purposes, and therefore primarily the realm of the states”); and (ii) the relevance of other contractual provisions in the Carriage Agreement to the interpretation of the language of the forum selection clause, *see* Dkt. No. 234-116, Affiliation Agreement §§ 1.12, 16.5, 16.7, 16.8, 16.9, 13.1, 13.2 (among others). The parties should also be prepared to discuss the significance of enforcement of a forum selection clause by a non-signatory to a contract. *See Magi XXI, Inc. v. Stato della Citta del Vaticano*, 714 F.3d 714, 723 (2d Cir. 2013) (for enforcement by a non-signatory to be proper, “the relationship between the non-signatory and that (latter) signatory must be sufficiently close that the non-signatory's enforcement of the forum selection clause is ‘foreseeable’ to the signatory against whom the non-signatory wishes to enforce the forum selection clause.”).

Because of the likelihood of the discussion of specific contractual provisions and language contained in the parties Affiliation Agreement, the Court may seal the Courtroom for some or all of the argument on this motion to protect the sensitive business information of the

parties that the Court has already placed under seal repeatedly in this matter. *See, e.g.*, Dkt. Nos. 147, 195, 215.

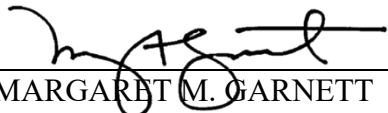
Defendants' Motions to Dismiss

Each Defendant will be allotted 15 minutes to present their argument, and Fubo will be permitted 25 minutes for a consolidated response. Due to the number of moving Defendants, rebuttal will be disfavored, but may be permitted on an *ad hoc* basis.

Counsel are permitted to use demonstratives in aid of their presentations, as long as they are shared with opposing counsel in advance of the argument. If the parties choose to use audio-visual demonstratives, they shall contact Chambers sufficiently in advance of the argument to schedule a technology walk-through, which can be scheduled for immediately preceding the appearance. *See* Individual Rule V(E)(2). Finally, while not mandated, the Court strongly encourages participation in the oral argument by junior attorneys who played a substantial role in drafting the relevant briefing. *See* Individual Rule II(A)(4).

Dated: November 20, 2024
New York, New York

SO ORDERED.



MARGARET M. GARNETT
United States District Judge